

SPECIAL CIVIL APPLICATION No 8623 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No @@

5. Whether it is to be circulated to the Civil Judge?  
No

DISTRICT MAGISTRATE

MR BHARAT T RAO for Respondent No. 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 19/02/99

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order dated 24.8.1998 contained in Annexure : C to the writ petition passed by the District Magistrate, Anand, under Section 3(2) of the Prevention of Black Marketing and Supply of Essential Commodities Act and has prayed for quashing of the said order and his immediate release from illegal detention.

2. From the grounds of detention it is manifestly clear that the petitioner was engaged in black marketing activity and the detention order was passed considering the grounds of detention and the activities of the petitioner. However, there is no necessity to deal with the factual aspect of the case because lethargy of the State Government and the Central Government both are responsible for allowing this writ petition.

3. This writ petition can be allowed only on the sole ground that the representation of the petitioner was factually held up by the State Government at the stage of sending parawise comments to the Central Government and the Central Government was also acting in a manner highly obnoxious to the wellknown procedure for expeditious disposal of such representation. Even complete affidavit was not cared to be filed by the Central Government. The only affidavit from the Central Government is dated 13.11.1998 from Shri A.L.Makhijani, Under Secretary in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi. In this Affidavit he has tried to shift the burden upon the State Government and has deposed about situation which existed till 13.11.1998. From Para : 4 of the Counter Affidavit of this officer it appears that after telegram dated 9.11.1998 parawise comments were not received from the State Government. There is also vague mention in Para : 5 that no case has been made out by the petitioner for intervention and the petition is liable to be rejected. This para therefore shows that this is nothing but pre-mature determination that the representation was liable to be rejected little caring that the parawise comments were not received from the State Government. This Counter Affidavit was filed only on the last date of hearing i.e. on 4.2.1999. Thereafter the State

Government was directed to clarify the position as to when parawise comments were forwarded to the Central Government. Today additional Counter Affidavit of Shri P.D.Shah, Under Secretary to the Government of Gujarat has been filed. From this Affidavit it transpires on demand made by the Central Government english version of representation was sent to the Central Government by Speed Post on 12.10.1998 which was delivered on 13.10.1998. Telegram of the Central Government dated 12.10.1998 was received on 14.10.1998. Thereafter parawise comments were called from the State Government. Parawise comments were received through the Detaining Authority on 14.11.1998 which were forwarded to the Central Government by Fax message dated 16.11.1998. The xerox copies of forwarding letter and receipt showing dispatch and receipt of parawise comments have been filed along with this Additional counter Affidavit as Annexures : A & B. Learned Counsel representing the Central Government has not filed any additional counter Affidavit as to what was the fate of representation of the detenu after receipt of parawise comments from the State Government on or after 16.12.1998. Under these circumstances safe inference can be drawn that the Central Government till date has not decided the representation. This is really a serious matter and the Authorities should in right earnest take up the matter and institute departmental inquiry as to who is responsible for withholding this representation and for not taking any action on the representation so far and also for not communicating to the detenu, what decision was taken on such representation. Such lethargy has not been noticed by this Court only in this case, but it has been noted in several cases. As such departmental inquiry is the demand of the day which should be seriously considered by the Authority of the Central Government.

4. The Authority of the State Government also cannot be spared for the lethargy. From the additional counter Affidavit of Shri P.D.Shah, Under Secretary to the Government of Gujarat it is clear that the telegram dated 12.10.1998 of the Central Government was received in the special Branch of Food and Civil Supplies on 14.10.1998 and on that date itself the letter was sent to the District Magistrate, Anand, viz. the Detaining Authority through Fax message to send parawise comments. It was noted by the State Government on 12.11.1998 after waiting for about a month that parawise remarks were not received from the District Magistrate, Anand. Telephonic message was sent to the District Magistrate, Anand on 12.11.1998 whereupon parawise comments were received on 14.11.1998

through covering letter of the District Magistrate dated 13.11.1998. Thereafter it was forwarded to the Central Government by Fax message dated 16.11.1998. It is thus apparent that the District Magistrate, Anand was sitting tight over the demand of parawise comments from the State Government for a period exceeding one month and no explanation has been offered in this belated counter Affidavit as to why parawise comments were not sent by the District Magistrate, viz. Detaining Authority expeditiously to the State Government for onward transmission to the Central Government. This is also a matter for cause and concern and the State Government is expected to deal with such matters with stiff hand and not to permit such lethargy to occur in future.

5. It is because of such lethargic attitude of the authorities that unnecessary time of the court is wasted.

6. For the reasons aforesaid the detention order has been rendered illegal. It cannot be sustained. The writ petition therefore succeeds and is allowed. The detention order dated 24.8.1998 is quashed. The petitioner shall be released forthwith unless wanted in some other case.

7. Copies of this Judgment will be sent by the Registry of this Court to the -

- (i) Additional Chief Secretary, Food and Civil Supplies Department, Block No.14, Sardar Bhavan, 6th Floor, Gandhinagar;
  - (ii) Secretary to the Ministry of Civil Supply and Public Distribution, Shashtri Bhawan, New Delhi
- for information and necessary action at their end.

sd/-

Date : February 19, 1998 ( D.C. Srivastava, J. )

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